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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

JUSTIN GARCIA-ARAUZ,

Petitioner,

v.

KRISTI NOEM, Secretary of the United States Department of Homeland Security; PAM BONDI, United States Attorney General; TODD LYONS, Director of United States Immigration and Customs Enforcement; BRYAN WILCOX, Field Office Director for Detention and Removal, U.S. Immigration and Customs Enforcement, Department of Homeland Security; JOHN MATTOS, Warden, Nevada Southern Detention Center; EXECUTIVE OFFICE FOR IMMIGRATION REVIEW (EOIR); SIRCE OWEN, Acting Director, EOIR; LAS VEGAS IMMIGRATION COURT,

Respondents.

Case No. 2:25-cv-02117-RFB-EJY

Federal Respondents' Response to the Amended Petition for Writ of Habeas Corpus, ECF No. 11

The Federal Respondents hereby submit this Response to Petitioner Justin Garcia-Arauz's ("Petitioner" or "Garcia-Arauz") Amended Petition for Writ of Habeas Corpus (ECF No. 11).

I. Background

A. Statutory and Regulatory Background

1. Applicants for Admission

"The phrase 'applicant for admission' is a term of art denoting a particular legal status." *Torres v. Barr*, 976 F.3d 918, 927 (9th Cir. 2020) (en banc). Section 1225(a)(1) states:

> (1) Aliens treated as applicants for admission.— An alien present in the United States who has not been admitted or who arrives in the United States (whether or not at a designated port of arrival …) shall be deemed for the purposes of this Act an applicant for admission.

8 U.S.C. § 1225(a)(1).[1] Section 1225(a)(1) was added to the INA as part of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA"). Pub. L. No. 104-208, § 302, 110 Stat. 3009-546. "The distinction between an alien who has effected an entry into the United States and one who has never entered runs throughout immigration law." *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001).

Before IIRIRA, "immigration law provided for two types of removal proceedings: deportation hearings and exclusion hearings." *Hose v. I.N.S.*, 180 F.3d 992, 994 (9th Cir. 1999) (en banc). A deportation hearing was a proceeding against an alien already physically present in the United States, whereas an exclusion hearing was against an alien outside of the United States seeking admission *Id.* (quoting *Landon v. Plasencia*, 459 U.S. 21, 25 (1982)). Whether an applicant was eligible for "admission" was determined only in exclusion proceedings, and exclusion proceedings were limited to "entering" aliens—those aliens "coming ... into the United States, from a foreign port or place or from an outlying possession." *Plasencia*, 459 U.S. at 24 n.3 (quoting 8 U.S.C. § 1101(a)(13) (1982)). "[N]on-citizens who had entered without inspection could take advantage of greater procedural and substantive rights afforded in deportation proceedings, while non-citizens who presented themselves at a port of entry for inspection were subjected to more summary exclusion

[1] Admission is the "lawful entry of an alien into the United States after inspection and authorization by an immigration officer." 8 U.S.C. § 1101(a)(13).

proceedings." *Hing Sum v. Holder*, 602 F.3d 1092, 1100 (9th Cir. 2010); *see also Plasencia*, 459 U.S. at 25-26. Prior to IIRIRA, aliens who attempted to lawfully enter the United States were in a worse position than aliens who crossed the border unlawfully. *See Hing Sum*, 602 F.3d at 1100; *see also* H.R. Rep. No. 104-469, pt. 1, at 225-229 (1996). IIRIRA "replaced deportation and exclusion proceedings with a general removal proceeding." *Hing Sum*, 602 F.3d at 1100.

IIRIRA added Section 1225(a)(1) to "ensure[] that all immigrants who have not been lawfully admitted, regardless of their physical presence in the country, are placed on equal footing in removal proceedings under the INA." *Torres*, 976 F.3d at 928; *see also* H.R. Rep. 104-469, pt. 1, at 225 (explaining that § 1225(a)(1) replaced "certain aspects of the current 'entry doctrine,'" under which illegal aliens who entered the United States without inspection gained equities and privileges in immigration proceedings unavailable to aliens who presented themselves for inspection at a port of entry). The provision "places some physically-but not-lawfully present noncitizens into a fictive legal status for purposes of removal proceedings." *Torres*, 976 F.3d at 928.

2. Detention under the INA

i. <u>Detention under 8 U.S.C. § 1225</u>

Section 1225 applies to "applicants for admission," who are defined as "alien[s] present in the United States who [have] not been admitted" or "who arrive[] in the United States." 8 U.S.C. § 1225(a)(1). Applicants for admission "fall into one of two categories, those covered by § 1225(b)(1) and those covered by § 1225(b)(2)." *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018); *Matter of Yajure Hurtado*, 29 I&N Dec. 216, 218 (BIA 2025).

Section 1225(b)(1) applies to arriving aliens and "certain other" aliens "initially determined to be inadmissible due to fraud, misrepresentation, or lack of valid documentation." *Jennings*, 583 U.S. at 287; 8 U.S.C. § 1225(b)(1)(A)(i), (iii). These aliens are generally subject to expedited removal proceedings. *See* 8 U.S.C. § 1225(b)(1)(A)(i). But if the alien "indicates an intention to apply for asylum . . . or a fear of persecution," immigration officers will refer the alien for a credible fear interview. *Id.* § 1225(b)(1)(A)(ii).

An alien "with a credible fear of persecution" is "detained for further consideration of the application for asylum." *Id.* § 1225(b)(1)(B)(ii). If the alien does not indicate an intent to apply for asylum, express a fear of persecution, or is "found not to have such a fear," they are detained until removed from the United States. *Id.* §§ 1225(b)(1)(A)(i), (B)(iii)(IV).

Section 1225(b)(2) is "broader" and "serves as a catchall provision." *Jennings*, 583 U.S. at 287. It "applies to all applicants for admission not covered by § 1225(b)(1)." *Id.* Under § 1225(b)(2), an alien "who is an applicant for admission" shall be detained for a removal proceeding "if the examining immigration officer determines that [the] alien seeking admission is not clearly and beyond a doubt entitled to be admitted." 8 U.S.C. § 1225(b)(2)(A); *see Hurtado*, 29 I. & N. Dec. at 220 ("[A]liens who are present in the United States without admission are applicants for admission as defined under section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), and must be detained for the duration of their removal proceedings."); *Matter of Q. Li*, 29 I. & N. Dec. 66, 68 (BIA 2025) ("for aliens arriving in and seeking admission into the United States who are placed directly in full removal proceedings, section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), mandates detention 'until removal proceedings have concluded.'") (citing *Jennings*, 583 U.S. at 299). However, the DHS has the sole discretionary authority to temporarily release on parole "any alien applying for admission to the United States" on a "case-by-case basis for urgent humanitarian reasons or significant public benefit." *Id.* § 1182(d)(5)(A); *see Biden v. Texas*, 597 U.S. 785, 806 (2022).

ii. Detention under 8 U.S.C. § 1226(a)

Section 1226 provides the general detention authority for aliens in removal proceedings. An alien "may be arrested and detained pending a decision on whether the alien is to be removed from the United States." 8 U.S.C. § 1226(a). Under § 1226(a), the United States may detain an alien during his removal proceedings, release him on bond, or release him on conditional parole. By regulation, immigration officers can release aliens if the alien demonstrates that he "would not pose a danger to property or persons" and "is likely to appear for any future proceeding." 8 C.F.R. § 236.1(c)(8). An alien can also request

a custody redetermination (often called a bond hearing) by an IJ at any time before a final order of removal is issued. *See* 8 U.S.C. § 1226(a); 8 C.F.R. §§ 236.1(d)(1), 1236.1(d)(1), 1003.19.

At a custody redetermination, the IJ may continue detention or release the alien on bond or conditional parole. 8 U.S.C. § 1226(a); 8 C.F.R. § 1236.1(d)(1). Immigration judges have broad discretion in deciding whether to release an alien on bond. *In re Guerra*, 24 I. & N. Dec. 37, 39–40 (BIA 2006). The IJ should consider the following factors during a custody redetermination: (1) whether the alien has a fixed address in the United States; (2) the alien's length of residence in the United States; (3) the alien's family ties in the United States; (4) the alien's employment history; (5) the alien's record of appearance in court; (6) the alien's criminal record, including the extensiveness of criminal activity, time since such activity, and the seriousness of the offense; (7) the alien's history of immigration violations; (8) any attempts by the alien to flee prosecution or otherwise escape authorities; and (9) the alien's manner of entry to the United States. *Id.* at 40. But regardless of these factors, an alien "who presents a danger to persons or property should not be released during the pendency of removal proceedings." *Id.* at 38.

iii. Review Before the Board of Immigration Appeals

The Board of Immigration Appeals (BIA) is an appellate body within the Executive Office for Immigration Review (EOIR) "charged with the review of those administrative adjudications under the [INA] that the Attorney General may by regulation assign to it." 8 C.F.R. § 1003.1(d)(1). By regulation, it has authority to review IJ custody determinations. 8 C.F.R. §§ 236.1; 1236.1. The BIA not only resolves particular disputes before it, but also "through precedent decisions, shall provide clear and uniform guidance to DHS, the immigration judges, and the general public on the proper interpretation and administration of the [INA] and its implementing regulations." *Id.* § 1003.1(d)(1). Decisions rendered by the BIA are final, except for those reviewed by the Attorney General. 8 C.F.R. § 1003.1(d)(7).

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II. Standard of Review

In a petition for a writ of habeas corpus, the petitioner is challenging the legality of his restraint or imprisonment. *See* 28 U.S.C. § 2241. The burden is on the petitioner to show the confinement is unlawful. *See Walker v. Johnston*, 312 U.S. 275, 286 (1941). Specifically, here, Petitioner challenges his temporary civil immigration detention pending his removal proceeding.

III. Argument

A. The Petition Should Be Denied for Failure to Carry the Burden of Proof

1. Petitioner Bears the Burden of Proof in Immigration Habeas Proceedings

In immigration habeas corpus proceedings, the petitioner must present evidence establishing the factual predicates for his claims. Habeas corpus is an extraordinary remedy, and petitioners seeking such relief cannot proceed on unsupported allegations alone. A recent decision directly on point illustrates this principle. In *Vargas Lopez v. Trump*, No. 8:25CV526, 2025 WL 2780351 (D. Neb. Sept. 30, 2025), the court denied an immigration habeas petition where the petitioner argued he should be detained under § 1226 rather than § 1225 but failed to provide any documentary evidence supporting his claim. *Id.* at *6. The court held this evidentiary failure was fatal to the petition, emphasizing that petitioners must come forward with proof to support their statutory arguments. *Id.* Further, at no point did the court place the burden of proof on the United States.

The *Vargas Lopez* court explained that even where the legal question is disputed and potentially meritorious, the petitioner must establish the factual predicates necessary to resolve that dispute. Without evidence, the petition must be denied regardless of the theoretical merits of the petitioner's legal theory. This principle recognizes that courts cannot grant extraordinary relief based on speculation or attorney argument divorced from factual support.

Petitioner argues that he is improperly detained under § 1225(b)(2). To establish this claim, Petitioner must prove his case, and each of the alleged factual elements in his case requires documentary support, yet Petitioner has provided none. *See generally* ECF No. 11.

2. Petitioner Has Access to the Requisite Evidentiary Documents Through Established Administrative Channels

Petitioner has made no effort to obtain the evidence necessary to support his request for habeas relief before filing his Petition, and he has offered no explanation for why he cannot obtain them through established administrative channels. Immigration attorneys routinely obtain their clients' immigration files through Freedom of Information Act requests submitted to ICE or USCIS. Immigration attorneys also obtain documents through Privacy Act requests, which provide access to agency records about specific individuals, or by submitting requests to EORI or immigration courts. There are established procedures and regulations to access the relevant agency records, including A-files. *See e.g.* 8 C.F.R. § 103.42 (rules relating to FOIA and the Privacy Act).

Petitioner's counsel is experienced in immigration law. It is inconceivable that counsel for Petitioner would not know how to obtain the substantive evidence that the Court requires to properly evaluate this case. Yet the Petition contains no representation that counsel attempted to obtain any of these materials before filing. The Petition does not state that counsel submitted a FOIA request and is awaiting a response. It does not state that counsel requested documents from ICE, EOIR, or an immigration court and was refused. It does not state that counsel requested the A-file under applicable regulations and encountered obstacles. The Petition is entirely silent regarding any efforts to secure documentary support for Petitioner's allegations.

This silence suggests that Petitioner filed this habeas petition without undertaking even basic efforts to obtain the documentary evidence necessary to support his claims. Petitioner appears to have assumed that the burden would shift to the Federal Respondents to produce all relevant materials once a petition was filed, regardless of whether Petitioner made any threshold evidentiary showing. This assumption is fundamentally at odds with

habeas corpus principles and the allocation of burdens. The party seeking relief bears the burden of establishing entitlement to that relief, which necessarily includes the burden of producing evidence supporting factual allegations.

Under the proper framework, Petitioner must first establish a threshold showing of unlawful detention supported by evidence. This means Petitioner must produce documents and testimony demonstrating that he is detained under circumstances not authorized by statute or in violation of constitutional protections. Only after Petitioner makes this threshold showing might the United States need to produce contrary evidence or justify continued detention with additional materials.

Here, Petitioner has not made even a threshold evidentiary showing. He has filed legal arguments and conclusory allegations without any supporting documentation. This approach, if endorsed by the Court, would allow petitioners to file bare-bones petitions consisting of legal theories and unsupported allegations, then require the United States to produce all potentially relevant materials that might support or refute those theories. Such an approach would fundamentally alter habeas practice and create perverse incentives for petitioners to file first and gather evidence later, knowing that the United States would be required to produce materials that petitioner should have obtained before filing.

The proper approach requires Petitioner to produce the documents to support the allegations in his Petition as part of his initial evidentiary showing. If Petitioner cannot obtain these documents through established administrative channels despite reasonable efforts, Petitioner should explain those efforts and the obstacles encountered. The Court could then determine whether to order production by the Federal Respondents based on a showing that the documents are genuinely unavailable to Petitioner despite diligent efforts.

3. Petitioner Has Provided No Evidence Supporting His Factual Allegations

The Amended Petition (ECF No. 11) consists entirely of legal argument and conclusory factual allegations unsupported by any documentary evidence. Despite having the burden of proof in this immigration habeas proceeding, Petitioner has attached no exhibits, affidavits, declarations, or administrative records to support his claims. This failure

to provide evidentiary support is not merely a technical deficiency. The documents Petitioner has failed to produce are essential to resolving the central legal question in this case, namely whether Petitioner is properly detained under 8 U.S.C. § 1225(b)(2) or § 1226(a). Without evidence of Petitioner's immigration history, the circumstances of his entry, any prior immigration proceedings or grants of status, and the specific charges filed against him, the Court cannot evaluate whether the statutory framework Petitioner challenges actually applies to him.

4. The Petition Should Be Dismissed or Denied

For the foregoing reasons, the Petition should be dismissed or denied for failure to carry the burden of proof. Petitioner has provided no evidence supporting his factual allegations despite having access to administrative mechanisms for obtaining relevant documentation. The Petition consists entirely of legal argument and conclusory assertions insufficient to sustain extraordinary habeas relief. *See Vargas Lopez*, 2025 WL 2780351, at *6. The Court's order requiring the Federal Respondents to produce the foundational documents for Petitioner's case improperly shifts the burden of proof from Petitioner to the Federal Respondents. Petitioner should not be permitted to use the immigration habeas process to force the United States to construct his case for him when he has not even attempted to obtain the readily available documentation necessary to support his claims. The proper approach requires Petitioner to produce these documents as part of his initial evidentiary showing, or at minimum to explain what efforts he made to obtain them and why those efforts were unsuccessful.

Only if Petitioner provides the requisite supporting documentation can the Court properly evaluate whether Petitioner's detention is authorized by statute and whether his legal arguments have any application to his circumstances. For the foregoing reasons, the Petition should be denied.

B. Petitioner is Lawfully Detained Under 8 U.S.C. § 1225

Petitioner's temporary detention pursuant to the stay provision of 8 C.F.R. § 1003.19(i)(2) is reinforced by Congress's command to detain Petitioner throughout his

removal proceedings pursuant to 8 U.S.C. § 1225(b)(2). Moreover, this temporary detention does not violate Due Process. Because Petitioner cannot show the temporary detention violates the law, the Petition must be denied. *See* 28 U.S.C. § 2241.

The current operative mechanism of Petitioner's detention is an automatic stay of release on bond for a maximum of 90 days under 8 C.F.R. § 1003.19(i)(2), but this confinement is statutorily authorized by 8 U.S.C. § 1225(b)(2), which requires detention throughout the entire removal proceedings.

Pursuant to 8 U.S.C. § 1225(b)(2)(A), "in the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceeding under section 1229a [removal proceedings]." 8 U.S.C. § 1225(b)(2)(A). The Supreme Court has held that 8 U.S.C. § 1225(b)(2)(A) is a mandatory detention statute and that aliens detained pursuant to that provision are not entitled to bond. *Jennings*, 583 U.S. at 287 ("Both § 1225(b)(1) and § 1225(b)(2) authorize the detention of certain aliens.").

Petitioner falls squarely within the ambit of Section 1225(b)(2)(A)'s mandatory detention requirement as Petitioner is an "applicant for admission" to the United States. As described above, an "applicant for admission" is an alien present in the United States who has not been admitted. 8 U.S.C. § 1225(a)(1). Congress's broad language here is unequivocally intentional—an undocumented alien is to be "deemed for purposes of this chapter an applicant for admission." *Id.* Petitioner is "deemed" an applicant for admission based on Petitioner's failure to seek lawful admission to the United States before an immigration officer, which is undisputed. *See generally* ECF Nos. 41, 41-1. And because Petitioner has not demonstrated to an examining immigration officer that Petitioner is "clearly and beyond a doubt entitled to be admitted," Petitioner's detention is mandatory. 8 U.S.C. § 1225(b)(2)(A). Thus, the Petitioner is properly detained pursuant to 8 U.S.C. § 1225(b)(2)(A), which mandates that Petitioner "shall be" detained.

The Supreme Court has confirmed an alien present in the country but never admitted is deemed "an applicant for admission" and that "detention must continue" "until removal

proceedings have concluded" based on the "plain meaning" of 8 U.S.C. § 1225. *Jennings*, 583 U.S. at 289 & 299. At issue in *Jennings* was the statutory interpretation. The Supreme Court reversed the Ninth Circuit Court of Appeal's imposition of a six-month detention time limit into the statute. *Id.* at 297. The Court clarified there is no such limitation in the statute and reversed on these grounds, remanding the constitutional Due Process claims for initial consideration before the lower court. *Id.* But under the words of the statute, as explained by the Supreme Court, 8 U.S.C. § 1225 includes aliens like the Petitioner who are present but have not been admitted and they shall be detained pending their removal proceedings.

Specifically, the Supreme Court declared, "an alien who 'arrives in the United States,' *or* 'is present' in this country but 'has not been admitted,' is treated as 'an applicant for admission.'" *Id.* at 287 (emphasis on "or" added). In doing so, the Court explained both aliens captured at the border and those illegally residing within the United States would fall under § 1225. This would include Petitioner as an alien who is present in the country without being admitted.

And now, the Board of Immigration Appeals (BIA) has confirmed the application of § 1225 in a published formal decision: "Based on the plain language of section 235(b)(2)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1225(b)(2)(A) (2018), Immigration Judges lack authority to hear bond requests or to grant bond to aliens who are present in the United States without admission." *Hurtado*, 29 I&N Dec. at 216. Indeed, §1225 applies to aliens who are present in the country *even for years* and who have not been admitted. *See Hurtado*, 29 I&N Dec. at 226 ("the statutory text of the INA . . . is instead clear and explicit in requiring mandatory detention of all aliens who are applicants for admission, without regard to how many years the alien has been residing in the United States without lawful status." (citing 8 U.S.C. §1225)).

In *Hurtado*, the BIA affirmed the decision of the immigration judge finding the Immigration Court lacked jurisdiction to conduct a bond hearing because the alien who was present in the United States for almost three years but was never admitted shall be detained

under 8 U.S.C. §1225 for the duration of his removal proceedings. *Id.* The case involved an alien who unlawfully entered the United States in 2022 and was granted temporary protected status in 2024. *Id.* at 216-17. However, that status was revoked in 2025, and the alien was subsequently apprehended and placed in removal proceedings. *Id.* at 217. It is clear from the decision, the alien was initially served with a Notice of Custody Determination, informing him of his detention under 8 U.S.C. § 1226 and his ability to request bond, like the Petitioner was in this case. *Id.* at 226. However, when the alien sought a redetermination of his custody status, the immigration judge held the Court did not have jurisdiction under § 1225. *Id.* at 216. The alien appealed to the BIA. *Id.*

In affirming the decision of the immigration judge who determined he lacked jurisdiction, the BIA found § 1225 clear and unambiguous as explained above. Thus, because the alien was present in the United States (regardless of how long) and because he was never admitted, he shall be detained during his removal proceedings. *See id.* at 228. In doing so, the BIA rejected the same arguments raised by Petitioner and by other similar petitioners in this District. For example, the BIA rejected the "legal conundrum" postulated by the alien that while he may be an applicant for admission under the statute, he is somehow not actually "seeking admission." *Id.* at 221. The BIA explained that such a leap failed to make sense and violated the plain meaning of the statute. *See id.*

Next, the BIA rejected the alien's argument that the mandatory detention scheme under § 1225 rendered the recent amendment to § 1226 under the Laken Riley Act superfluous. *Id.* The BIA explained, "nothing in the statutory text of section 236(c), including the text of the amendments made by the Laken Riley Act, purports to alter or undermine the provisions of section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), requiring that aliens who fall within the definition of the statute 'shall be detained for [removal proceedings].'" *Id.* at 222. The BIA explained further that any redundancy between the two statutes does not give license to "rewrite or eviscerate" one of the statutes. *See id.* (quoting *Barton v. Barr*, 590 U.S. 222, 239 (2020)).

Also, the BIA reasoned that it matters not that the alien was initially served with a warrant listing 8 U.S.C. § 122**6** and informing him of his ability to seek bond—an Immigration Court cannot bestow jurisdiction upon itself with that initial paperwork when said jurisdiction has been specifically revoked by Congress in § 1225. *See id.* at 226-27 (explaining "the mere issuance of an arrest warrant does not endow an Immigration Judge with authority to set bond for an alien who falls under section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A).") The BIA further pointed out, "Our acknowledgement that aliens detained under section 236(a) may be eligible for discretionary release on bond does not mean that *all* aliens detained while in the United States with a warrant of arrest are detained under section 236(a) and entitled to a bond hearing before the Immigration Judge, regardless of whether they are applicants for admission under section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A)." *Id.* at 227 (quotations omitted). Thus, the BIA rejected this and every argument raised by the alien to find § 1225 applied to him despite residing in the country for years. *Id.*

The BIA mandate is clear: "under a plain language reading of section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), Immigration Judges lack authority to hear bond requests or to grant bond to aliens, like the respondent, who are present in the United States without admission." *Id.* at 225. Indeed, this ruling emphasizes that § 1225 applies to aliens like the Petitioner who is also present in the United States but has not been admitted.

The BIA mandate is also sweeping. The *Hurtado* decision was unanimous, conducted by a three-appellate judge panel. *See id. generally.* It is binding on all immigration judges in the United States. 8 C.F.R. § 1003.1(g)(1) ("[D]ecisions of the Board and decisions of the Attorney General are binding on all officers and employees of DHS or immigration judges in the administration of the immigration laws of the United States."). And because the decision was published, a majority of the entire Board must have voted to publish it, which establishes the decision "to serve as precedent[] in all proceedings involving the same issue or issues." *See* 8 C.F.R. § 1003.1(g)(2)-(3). Indeed, this is the law of the land in immigration court today. *See* also 8 C.F.R. § 1003.1(d)(1) (explaining "the Board, through precedent

decisions, shall provide clear and uniform guidance to DHS, the immigration judges, and the general public on the proper interpretation and administration of the Act and its implementing regulations."). And in the Board's own words, *Hurtado* is a "precedential opinion." *Id.* at 216.

As such, immigrant judges are holding § 1225 applies to aliens who are present but not admitted and therefore immigration judges have denied bond for lack of jurisdiction. But in some prior cases where an immigration judge erred in releasing a qualifying alien on bond, like Petitioner, who is subject to mandatory detention, DHS's invocation of the stay of release pending appeal in 8 C.F.R. § 1003.19(i)(2) ensured DHS's opportunity to vindicate Congress's mandatory detention scheme.

While the law is now clear in immigration court, the BIA has yet to reach DHS's appeal involving the Petitioner. But in the coming days, the Federal Respondents would expect the BIA to reach this appeal, apply the broad holding in *Hurtado*, and reverse the immigration judge's release of the Petitioner on bond. Indeed, this very decision by the immigration judge was wrongly decided and without jurisdiction and will soon be reversed.

Because Petitioner shall be detained during the removal proceedings and these proceedings are uncontrovertibly ongoing, his temporary detention is lawful. Any argument by Petitioner that his detention exceeds statutory authority is clearly invalid and should be rejected. The United States is aware of prior rulings in this District and others rejecting this argument (*see e.g.*, *Herrera-Torralba v. Knight*, 2:25-cv-01366-RFB-DJA (D. Nev. Sep 05, 2025); *Maldonado-Vazquez v. Feeley*, 2:25-cv-01542-RFB-EJY (D. Nev. Sep 17, 2025)), but the United States respectfully maintains §1225 straightforwardly applies to Petitioner, especially in light of *Jennings. See Jennings*, 583 U.S. at 287 (explaining "an alien who "arrives in the United States," or "is present" in this country but "has not been admitted," is treated as "an applicant for admission." § 1225(a)(1)).

1. The *Vargas Lopez v. Trump* Recent Decision Is Highly Instructive and Supports Petitioner's Detention Under 8 U.S.C. § 1225

The United States District Court for the District of Nebraska's decision denying the habeas corpus petition in *Vargas Lopez v. Trump* is particularly relevant here. In *Vargas Lopez*, the petitioner, an undocumented alien who had been residing in the United States since 2013, sought immediate release from detention. *Vargas Lopez*, No. 8:25CV526, 2025 WL 2780351, at *1 (D. Neb. Sept. 30, 2025). Prior to filing his petition, Vargas Lopez had received a bond hearing, and the immigration judge ordered that he be released from custody under bond of $10,000. *Id.* at *3. DHS however appealed the bond determination, which automatically stayed Vargas Lopez's release on bond. *Id.* Vargas Lopez then filed a petition for habeas corpus alleging that the automatic stay was *ultra vires* and violated his due process rights. *Id.* He also alleged that application of 8 U.S.C. § 1225 in his case was unlawful because 8 U.S.C. § 1226 should control his detention. *Id.*

First, the court denied the petition because Vargas Lopez failed to carry his burden of demonstrating by a preponderance of the evidence that his detention was unlawful. *Id.* at *6. Vargas Lopez argued that he fell under § 1226, not 1225, but his petition and filings failed to provide proof of the "warrant for Vargas Lopez's arrest" that § 1226 requires.

Second, the court concluded that Vargas Lopez was subject to detention without possibility of bond under § 1225(b)(2). To do so, the court analyzed the Supreme Court's decision in *Jennings* to reject the notion that § 1225(b)(2) and § 1226(a) apply to two distinct groups of aliens; the two sections are not mutually exclusive. *Id.* at *6–8. The court then concluded that Vargas Lopez is an alien within the "catchall" scope of § 1225(b)(2), subject to detention without possibility of release on bond through a proceeding on removal under § 1229a. *Id.* at *9. The court found that Vargas Lopez was an "applicant for admission" because his counsel admitted that Vargas Lopez "wishe[d] to stay in this country." *Id.* That finding, according to the court, was consistent with the conclusions of the BIA in *Hurtado* and *Jennings*.

Pursuant to the language of the statute and the holding of *Jennings*, the court said that "just because Vargas Lopez illegally remained in this country *for years* does not mean that he is suddenly not an 'applicant for admission' under § 1225(b)(2)." *Id.* "Even if Vargas Lopez

might have fallen within the scope of § 1226(a)," the court found "he also certainly fit within the language of § 1225(b)(2) as well." *Id.* "The Court thus conclude[d] that the *plain language* of § 1225(b)(2) and the "all applicants for admission" language of *Jennings* permitted the DHS to detain Vargas Lopez under § 1225(b)(2)." *Id.*

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2. The Chavez v. Noem Recent Decision Is Also Instructive

The United States District Court for the Southern District of California's decision in *Chavez v. Noem*, No. 3:25-CV-02325-CAB-SBC, 2025 WL 2730228, at *1 (S.D. Cal. Sept. 24 2025), is also instructive. In *Chavez,* the court denied a motion for a temporary restraining order ("TRO") filed by the petitioners who were detained under 8 U.S.C. § 1225(b)(2). *Chavez*, 2025 WL 2730228, at *1. The *Chavez* petitioners argued they should not have been mandatorily detained and instead they should have received bond redetermination hearings under § 1226(a). *Id.* The *Chavez* petitioners filed a motion for TRO, seeking to "enjoin[] Respondents from continuing to detain them unless [they received] an individualized bond hearing . . . pursuant to 8 U.S.C. § 1226(a) within fourteen days of the TRO." *Id.*

In denying the TRO, the *Chavez* court went no further than the plain language of § 1225(a)(1). *Id.* at *4. Beginning and ending with the statutory text, the *Chavez* court correctly found that because petitioners did not contest that they are "alien[s] present in the United States who ha[ve] not been admitted," then the *Chavez* petitioners are "applicants for admission" and thus subject to the mandatory detention provisions of "applicants for admission" under § 1225(b)(2). *Id*; *see also Hurtado*, 29 I. & N. Dec. at 221–222 (finding that an alien who entered without inspection is an "applicant for admission" and his argument that he cannot be considered as "seeking admission" is unsupported by the plain language of the INA, and further stating, "[if]f he is not admitted to the United States . . . but he is not 'seeking admission' . . . then what is his legal status?").

3. The BIA's Decision in *Hurtado* Is Entitled to Significant Weight in Construing the Scope of 8 U.S.C. § 1225(b)(2)

While *Loper Bright Enterprises v. Raimondo*, 603 U.S. 726 (2024), eliminated Chevron

deference, *Hurtado* nonetheless should be afforded substantial weight under *Skidmore v. Swift & Co.*, 323 U.S. 134 (1944). Under *Skidmore*, the weight owed to an agency interpretation depends on "the thoroughness evident in its consideration, the validity of its reasoning, its consistency with earlier and later pronouncements, and all those factors which give it power to persuade, if lacking power to control." *Id.* at 140. *Hurtado* scores highly on these factors.

First, the BIA applied its specialized expertise in immigration detention law, the very subject Congress charged it with administering. Its decision addressed the interplay between §§ 1225 and 1226 in detail, relying on statutory text, legislative history, and decades of experience resolving custody questions. Second, the BIA's reasoning is thorough and well supported. It carefully explained why noncitizens who entered without inspection remain "applicants for admission" under § 1225(a)(1), and why reclassifying them under § 1226(a) would create statutory issues and undermine congressional intent. Third, the BIA's interpretation is consistent with Supreme Court precedent, including *Jennings*, which recognized that detention under § 1225(b) is mandatory. Finally, adopting *Hurtado* promotes uniformity and coherence in federal immigration law by preventing detention outcomes from turning on the happenstance of when and where a noncitizen is apprehended.

4. The Legislative History Bolsters Petitioner's Detention

When the plain text of a statute is clear, "that meaning is controlling" and courts "need not examine legislative history." *Washington v. Chimei Innolux Corp.*, 659 F.3d 842, 848 (9th Cir. 2011). But to the extent legislative history is relevant here, nothing "refutes the plain language" of § 1225. *Suzlon Energy Ltd. v. Microsoft Corp.*, 671 F.3d 726, 730 (9th Cir. 2011). Congress passed IIRIRA to correct "an anomaly whereby immigrants who were attempting to lawfully enter the United States were in a worse position than persons who had crossed the border unlawfully." *Torres v. Barr*, 976 F.3d at 928; *Chavez*, 2025 WL 2730228, at *4. It "intended to replace certain aspects of the [then] current 'entry doctrine,' under which illegal aliens who have entered the United States without inspection gain equities and privileges in immigration proceedings that are not available to aliens who present themselves for inspection at a port of entry." *Torres*, 976 F.3d at 928 (quoting H.R.

Rep. 104-469, pt. 1, at 225); *Chavez*, 2025 WL 2730228, at *4 (The addition of § 1225(a)(1) "ensure[d] that all immigrants who have not been lawfully admitted, regardless of their physical presence in the country, are placed on equal footing in removal proceedings under the INA—in the position of an 'applicant for admission.' ").

As the pertinent House Judiciary Committee Report explains: "[Before the IIRIRA], aliens who [had] entered without inspection [were] deportable under section 241(a)(1)(B)." H.R. Rep. No. 104-469, pt. 1, at 225 (1996). But "[u]nder the new 'admission' doctrine, such aliens *will not be considered to have been admitted*, and thus, must be subject to a ground of inadmissibility, rather than a ground of deportation, *based on their presence without admission*." *Id.* Thus, applicants for admission remain such unless an immigration officer determines that they are "clearly and beyond a doubt entitled to be admitted." 8 U.S.C. § 1225(b)(2)(A); *Hurtado*, 29 I. & N. Dec. at 228. Failing to clearly and beyond a doubt demonstrate that they are entitled to admission, such aliens "shall be detained for a proceeding under section 240." 8 U.S.C. § 1225(b)(2)(A); *see also Jennings*, 583 U.S. at 288.

The Court should thus reject Petitioner's proposed statutory interpretation and request to be released because Petitioner's requests would make aliens who presented at a port of entry subject to mandatory detention under § 1225, but those who crossed illegally would be eligible for a bond under § 1226(a).

5. Under *Loper Bright*, the Statute Controls, Not Prior Agency Practices

Any argument that prior agency practice supports applying § 1226(a) to Petitioner is unavailing because under *Loper Bright*, the plain language of the statute and not prior practice controls. *Hurtado*, 29 I. & N. Dec. at 225–26. In overturning *Chevron*, the Supreme Court recognized that courts often change precedents and "correct[] our own mistakes" *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 411 (2024) (overturning *Chevron, U.S.A., Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837 (1984)). *Loper Bright* overturned a decades old agency interpretation of the Magnuson-Stevens Fishery Conservation and Management Act that itself predated IIRIRA by twenty years. *Loper Bright Enterprises*, 603 U.S. at 380. Thus, longstanding agency practice carries little, if any, weight under *Loper Bright*. The

weight given to agency interpretations "must always 'depend upon their thoroughness, the validity of their reasoning, the consistency with earlier and later pronouncements, and all those factors which give them power to persuade.'" *Loper Bright Enterprises*, 603 U.S. at 432–33 (quoting *Skidmore.*, 323 U.S. at 140 (cleaned up)).

For example, here Petitioner points to 62 Fed. Reg. at 10323, where the agency provided no analysis of its reasoning. In contrast, the BIA's recent precedent decision in *Hurtado* includes thorough reasoning. *Hurtado*, 29 I. & N. Dec. at 221–22. In *Hurtado*, the BIA analyzed the statutory text and legislative history. *Id.* at 223-225. It highlighted congressional intent that aliens present without inspection be considered "seeking admission." *Id.* at 224. The BIA concluded that rewarding aliens who entered unlawfully with bond hearings while subjecting those presenting themselves at the border to mandatory detention would be an "incongruous result" unsupported by the plain language "or any reasonable interpretation of the INA." *Id.* at 228.

To be sure, "when the best reading of the statute is that it delegates discretionary authority to an agency," the Court must "independently interpret the statute and effectuate the will of Congress." *Loper Bright Enterprises*, 603 U.S. at 395. But "read most naturally, §§ 1225(b)(1) and (b)(2) mandate detention for applicants for admission until certain proceedings have concluded." *Jennings*, 583 U.S. at 297 (cleaned up). Prior practice does not support Petitioner's position that the plain language mandates detention under § 1226(a).

C. Petitioner's Temporary Detention Does Not Offend Due Process

As mentioned above, Congress broadly crafted "applicants for admission" to include undocumented aliens present within the United States like Petitioner. *See* 8 U.S.C. § 1225(a)(1). And Congress directed aliens like the Petitioner to be detained during their removal proceedings. 8 U.S.C. § 1225(b)(2)(A); *Jennings*, 583 U.S. at 297 ("Read most naturally, §§ 1225(b)(1) and (b)(2) thus mandate detention of applicants for admission until certain proceedings have concluded."). In so doing, Congress made a legislative judgment to detain undocumented aliens during removal proceedings, as they—by definition—have

crossed borders and traveled in violation of United States law. As explained above, that is the prerogative of the legislative branch serving the interest of the government and the United States.

The Supreme Court has recognized this profound interest. *See Shaughnessy v. United States*, 345 U.S. 206, 210 (1953) ("Courts have long recognized the power to expel or exclude aliens as a fundamental sovereign attribute exercised by the Government's political departments largely immune from judicial control."). And with this power to remove aliens, the Supreme Court has recognized the United States' longtime Constitutional ability to detain those in removal proceedings. *Carlson v. Landon*, 342 U.S. 524, 538 (1952) ("Detention is necessarily a part of this deportation procedure."); *Wong Wing v. United States* 163 U.S. 228, 235 (1896) ("Proceedings to exclude or expel would be vain if those accused could not be held in custody pending the inquiry into their true character, and while arrangements were being made for their deportation."); *Demore v. Kim*, 538 U.S. 510, at 531 (2003) ("Detention during removal proceedings is a constitutionally permissible part of that process."); *Jennings*, 583 U.S. at 286 ("Congress has authorized immigration officials to detain some classes of aliens during the course of certain immigration proceedings. Detention during those proceedings gives immigration officials time to determine an alien's status without running the risk of the alien's either absconding or engaging in criminal activity before a final decision can be made.").

In another immigration context (aliens already ordered removed awaiting their removal), the Supreme Court has explained that detaining these aliens less than six months is presumed constitutional. *See Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). But even this presumptive constitutional limit has been subsequently distinguished as perhaps unnecessarily restrictive in other contexts. For example, in *Demore*, the Supreme Court explained Congress was justified in detaining aliens during the entire course of their removal proceedings who were convicted of certain crimes. *Demore*, 538 U.S. at 513. In that case, similar to undocumented aliens like Petitioner, Congress provided for the detention of certain convicted aliens during their removal in 8 U.S.C. § 1226(c). *See id.* The Court

emphasized the constitutionality of the "definite termination point" of the detention, which was the length of the removal proceedings. *Id.* at 512 ("In contrast, because the statutory provision at issue in this case governs detention of deportable criminal aliens *pending their removal proceedings,* the detention necessarily serves the purpose of preventing the aliens from fleeing prior to or during such proceedings. Second, while the period of detention at issue in *Zadvydas* was "indefinite" and "potentially permanent," *id.,* at 690–691, 121 S.Ct. 2491, the record shows that § 1226(c) detention not only has a definite termination point, but lasts, in the majority of cases, for less than the 90 days the Court considered presumptively valid in *Zadvydas.*").[2] In light of Congress's interest in dealing with illegal immigration by keeping specified aliens in detention pending the removal period, the Supreme Court dispensed of any Due Process concerns without engaging in the "*Mathews v. Eldridge* test" *See id. generally.*

Likewise, in the case at bar Petitioner's temporary detention pending his removal proceedings does not violate Due Process. Petitioner has been temporarily detained for a short time as his *process* unfolds. Petitioner's ample available process in his current removal proceedings demonstrate no lack of Procedural Due Process—nor any deprivation of liberty "sufficiently outrageous" required to establish a Substantive Due Process claim. *See generally Reed v. Goertz*, 598 U.S. 230, 236 (2023); *Young v. City of St. Charles, Mo.*, 244 F.3d 623, 628 (8th Cir. 2001), *as corrected* (Mar. 27, 2001), *as corrected* (May 1, 2001). Congress simply made the decision to detain him pending removal which is a "constitutionally permissible part of that process." *See Demore*, 538 U.S. at 531.

The temporary, automatic and discretionary stays permits the United States an opportunity to appeal an IJ bond decision to correct any errors by the Immigration Judge while providing "an appropriate and less restrictive means whereby the government's interest in seeking a stay of the custody redetermination may be protected without unduly infringing upon Petitioner's liberty interest. *Zavala*, 310 F. Supp. 2d at 1077; *El-Dessouki v. Cangemi*, No. CIV 063536 DSD/JSM, 2006 WL 2727191, at *3 (D. Minn. Sept. 22, 2006);

[2] In 2018 the Court again highlighted the significance of a "definite termination point" for detention of certain aliens pending removal. *See Jennings*, 583 U.S. at 304.

Altayar v. Lynch, No. CV-16-02479-PHX-GMS (JZB), 2016 U.S. Dist. LEXIS 175819, at *10–11 (D. Ariz. Nov. 23, 2016).

As explained in *Altayar*, purpose of the automatic stay is to "avoid the necessity of having to decide whether to order a stay on extremely short notice with only the most summary presentation of the issues." Review of Custody Determinations, 71 FR 57873-01, 2006 WL 2811410; *Altayar*, 2016 U.S. Dist. LEXIS 175819 at *12-13. An automatic stay of up to 90 days does not violate due process because it is narrowly tailored to serve a compelling United States' interest. *Id.* In *Altayar*, the Court found there is no procedural due process violation from § 1003.19(i)(2).

In this case, Petitioner who is present in the United States without admission or parole, is an applicant for admission in INA § 240 removal proceedings and is therefore detained pursuant to 8 U.S.C. § 1225. As discussed above, his detention is mandatory and the IJ does not have jurisdiction to issue a bond. Because the IJ in this case conducted a bond hearing and granted a bond *in error*, the automatic stay of 8 C.F.R. § 1003.19(i)(2) has here served the very purpose for which it was created in the first place. As history has revealed, subsequent to the IJ's decision error, the BIA issued its precedential decision in *Hurtado*, essentially superseding the IJ's erroneous decision and showing that IJ lacked jurisdiction to grant Petitioner's bond. Had the automatic stay not been in place, the error would have gone farther, and Petitioner would have been mistakenly released from DHS custody.

The United States is aware of prior rulings in this District and others rejecting these arguments, but the United States respectfully maintains Petitioner has not been deprived of Due Process in light of the aforementioned precedent.

D. Request for Attorney's Fees Should be Denied

Petitioner seeks attorney's fees and costs. The Federal Respondents hereby construe the request as a request for attorney's fees pursuant to § 2412 of the Equal Access for Justice Act ("EAJA"), which allows fee-shifting in civil actions by or against the United States. EAJA has two parts, agency adversarial adjudication fee-shifting, 5 U.S.C. § 504,

and fee-shifting in civil actions in federal court, 28 U.S.C. § 2412. Petitioner cannot obtain fees in this case under 5 U.S.C. § 504 since that provision excludes administrative immigration proceedings. *Ardestani v. Immigration and Naturalization Service,* 502 U.S. 129 (1991). His only recourse for fees is pursuant to § 2412(d)(1)(A), which provides, subject to exceptions not relevant here, that in an action brought by or against the United States, a court must award fees and expenses to a prevailing non-government party "unless the court finds that the position of the United States was substantially justified or that special circumstances make an award unjust." 28 U.S.C. § 2412(d)(1)(A).

Here, Petitioner's request is premature because he is not a prevailing party. Second, even if Petitioner were to prevail in this case, the Federal Respondents' position asserted in this Response is substantially justified because other courts have found the arguments presented herein to be persuasive and that DHS can lawfully detain, under the mandatory detention provisions of 8 U.S.C. § 1225, other petitioners who are similarly situated as Petitioner.

As described above, the United States District Court for the District of Nebraska and the United States District Court for the Southern District of California have both issued decisions holding that, under the plain language of § 1225(a)(1), aliens present in the United States who have not been admitted are "applicants for admission" and are thus subject to the mandatory detention provisions of "applicants for admission" under § 1225(b)(2). *See Vargas Lopez*, 2025 WL 2780351; *Chavez*, 2025 WL 2730228. Because other federal judges have found persuasive the positions advanced by the Federal Respondents in this case, the Federal Respondents' position is substantially justified. *See Medina Tovar v. Zuchowski*, 41 F.4th 1085, 1091 (9th Cir. 2022) (finding that the district court did not abuse its discretion, in finding that the United States' position was substantially justified for purposes of EAJA, where different judges disagreed about the proper reading of the statute and the case involved an issue of first impression).

Because the United States' position in this case is substantially justified, Petitioner's request for attorney's fees under EAJA cannot prevail.

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IV. Conclusion

For these reasons, Federal Respondents request that the Petition be denied.

Respectfully submitted this 14th day of November 2025.

SIGAL CHATTAH
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/s/ Christian R. Ruiz
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